

E. BARGER MILLER, III

IBLA 90-545

Decided July 26, 1991

Appeal from a decision by the Colorado State Office, Bureau of Land Management, refusing to accept an obsolete form of assignment affecting record title to oil and gas lease C-08905.

Affirmed.

1. Oil and Gas Leases: Assignments or Transfers--Regulations: Generally--Regulations: Interpretation--Regulations: Validity

BLM properly refused to accept an assignment of record title to an oil and gas lease filed on a form previously declared obsolete by the Director, BLM, by notice published in the Federal Register pursuant to Departmental regulation 43 CFR 3106.4-1.

APPEARANCES: William B. Collister, Esq., Denver, Colorado, for appellant; Jack Ralston, Charlestown, Rhode Island, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

E. Barger Miller III has appealed from a decision issued September 14, 1990, by the Colorado State Office, Bureau of Land Management (BLM), that returned without action a filing fee of \$25 and a form of assignment affecting record title to oil and gas lease C-08905. The form of assignment, dated June 11, 1984, furnished on Departmental Form 3106-5 (October 1982), was received for filing by BLM on September 13, 1990. <sup>1/</sup> BLM explained that the assignment was refused because it was on an "obsolete form," which, pursuant to notice published at 53 FR 27404 (July 20, 1988), could no longer be accepted.

Citing Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), appellant argues that it was error to refuse to accept the assignment because it was on a

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<sup>1/</sup> The case file indicates that on Aug. 20, 1990, BLM returned an earlier check and an assignment offered by appellant, with the comment that "[w]e cannot accept obsolete forms. Enclosed you will find the correct forms" (Notice of Return of Remittance dated Aug. 29, 1990). In a letter dated Sept. 11, 1990, that accompanied the form of assignment now before us, appellant replied that "[w]e know that this assignment is on the old form No. 3106-5 (October 1982). Please process the assignment."

form no longer in use. He contends that the assignment should have been approved and that to require that it be made on a current form be considered by BLM amounted to rejection for a "trivial and nonsubstantive" reason and, further, amounts to "a matter of form" (Statement of Reasons (SOR) at 5). Quoting from an essay published at 29 Rocky Mtn. Min. L. Inst. 589, 597 (1984), 2/ he argues that the assignment to him should have been approved because the Secretary's authority to disapprove an oil and gas lease assignment "where an assignee is unqualified to hold a Federal lease, has failed to provide a sufficient bond, or where there is an attempt to assign a deposit or part of a legal subdivision (SOR at 4). Arguing that none of these causes for rejection is present, appellant concludes that the use of an out-of-date form is not a mandatory requirement" of the law. Id. He concludes that BLM incorrectly refused to accept the offered form because the official form used, while out-of-date, conformed generally to requirements established by section 30 of the Mineral Leasing Act (1920).

[1] There has not been a rejection of appellant's assignment, in the sense that it was reviewed and found to be defective. The review of this document had not reached that point, since BLM required, first, in order to be entitled to such review, that a transfer of record title be made on a form required by regulation. BLM determined that the form offered by appellant was not the required form and therefore will consider appellant's arguments in the context of the action actually taken, although we cannot accept his characterization of the action taken as a "rejection."

The decision in Conway v. Watt, 717 F.2d at 516, did use the words "a de minimus, a non-substantive error" when the court decided to reject a simultaneous oil and gas lease offer because the application was undated. In Conway the court found that, where the reason for rejection was "the absence of a date," and the date was not critical to determining the applicant's qualification to lease, that the error was not sufficient to warrant rejection of the otherwise adequate offer. Id. In a later analysis of its Conway decision in KVK Partnership v. Felt, 798 F.2d 1101 (10th Cir. 1985), the court explained that the Conway decision should be read narrowly, because "[r]ead in light of its facts, Conway held that a BLM regulation may not be per se grounds for disqualification if it does not further a statutory purpose." Holding that BLM's rejection of an incomplete KVK application where two of three interested partners had failed to sign application documents, the court agreed with the applicants to comply "with a requirement reasonably related to a legitimate goal" justified rejection of the application. In this case, these decisions can be of little

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2/ Carleton L. Ekberg, Federal Oil and Gas Leasing: Developments in Selected Problems and Issues.

3/ For a discussion concerning simultaneous oil and gas lease application forms found "unacceptable" so that they could not be used, see Shaw Resources, Inc., 79 IBLA 153, 175-79, 91 I.D. 122, 134-37 (1984).

assistance, for BLM has not rejected an offer to lease, but has required that appellant submit the assignment of lease C-08 use before it will be evaluated. Nonetheless, it clearly is appellant's position, although not directly so stated, that the current 3106.4-1 serves no substantial purpose and should not be applied.

The regulation requiring that transfers of record title be made "on a current form approved by the Director [of BLM] was promulgated to conform agency practice to requirements imposed by the Federal Onshore Oil and Gas Leasing Reform Act, 30 U.S.C. § 187(a) (1988). See 53 FR 17340 (May 16, 1988). Pursuant to provisions of 43 CFR 3106.4-1 authorizing the Director to make forms obsolete, notice was given that "any assignment or transfer filed with the Bureau of Land Management for approval on any edition of the forms other than the June 1988 edition \* \* \* shall be unacceptable and will be returned for re-execution on 27404 (July 20, 1988). It was this procedure that BLM followed when it notified appellant that the 1982 form on which the assignment had been executed could no longer be used.

The requirement appearing at 43 CFR 3106.4-1, that the current form of assignment be used, therefore provided the basis for the action taken by BLM in this case. While appellant has challenged this action, he has failed to explain why this regulation is arbitrary in this case, or to show, as he argues, that the regulation serves no substantial purpose. The arguments raised by appellant are a challenge to the validity of the regulation itself. This Board, however, is not the proper forum in which to test the validity of a regulation to implement the Reform Act. Aside from the question whether such a challenge would now be timely, this Board has no authority to declare invalid duly promulgated regulations of the Department. American Gilsonite Co., 111 IBLA 1, 96 (1989); Coal & Mining Co., 52 IBLA 60, 88 I.D. 24 (1981).

That the statutory and regulatory laws governing transfers of oil and gas leases have been amended is not even in dispute. Appellant who relies entirely on the discussion of the state of the law in 1984 quoted by his SOR. This discussion, however, does not present the resolution of the problem presented by his appeal, which, as pointed out above, did not involve a decision on the merits of the appeal but found it to be unacceptable. We therefore find that BLM correctly applied 43 CFR 3601.4-1 in September 1990 when it rejected the obsolete form offered by appellant and required him to submit his record title assignment on a form in current use. 4/

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4/ Because of our disposition of this appeal, we do not reach the issues sought to be raised by Jack Ralston, apparently the assignor of the disputed June 11, 1984, assignment on behalf of Ralston Oil & Gas Company the assignor. In his answer to appellant's Statement of Issues, appellant transferred his interest in lease C-08905 to Hera Resources on Mar. 13, 1987, and offers a copy of an assignment of the lease to Hera Resources.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, the appeal from is affirmed.

Franklin D. Arness  
Administrative Judge

I concur:

R. W. Mullen  
Administrative Judge

fn. 4 (continued)

appellant to show that the 1984 assignment to appellant should not be approved by BLM. As the comment to rulemaking published observed concerning disputed lease transfers, "[w]hen factors such as the receipt of any intervening transfer cause the Bureau to determine the transfer is still valid \* \* \* an inquiry would be made \* \* \* prior to approval." 53 FR 17346. It has been Departmental policy to resolve disputes of this sort among themselves and to refrain from action until they have settled their competing claims. 108 IBLA 267 (1989). Whether there is such a dispute in this case need not now detain us because the result reached here, a finding that the 1984 assignment was in unacceptable form, finally decides the question raised by the offered form.

